

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

B.P.J. by her next friend and mother, HEATHER JACKSON,

Plaintiff,

v.

WEST VIRGINIA STATE BOARD OF
EDUCATION, HARRISON COUNTY BOARD
OF EDUCATION, WEST VIRGINIA
SECONDARY SCHOOL ACTIVITIES
COMMISSION, W. CLAYTON BURCH in his
official capacity as State Superintendent, and
DORA STUTLER in her official capacity as
Harrison County Superintendent,

Defendants,

and

THE STATE OF WEST VIRGINIA,

Defendant-Intervenor.

Civil Action No. 2:21-cv-00316

Hon. Joseph R. Goodwin

**PLAINTIFF'S CONSOLIDATED OPPOSITION TO DEFENDANTS' MOTIONS TO
DISMISS**

All Defendants other than Defendant-Intervenor the State of West Virginia filed motions to dismiss the Complaint. *See* ECF No. 54 (West Virginia State Board of Education and Superintendent W. Clayton Burch’s Motion to Dismiss); ECF No. 56 (West Virginia Secondary School Activities Commission’s Motion to Dismiss); ECF No. 58 (Harrison County Board of Education and Superintendent Dora Stutler’s Motion to Dismiss). On July 16, within 21 days after those motions were filed, Plaintiff filed the First Amended Complaint pursuant to Federal Rule of Civil Procedure 15(a)(1)(B) (allowing a plaintiff to “amend its pleading once as a matter of course” within 21 days after service of a motion under Rule 12(b)). *See* ECF No. 64.

“The general rule . . . is that an amended pleading supersedes the original pleading, rendering the original pleading of no effect.” *Skibbe v. Accredited Home Lenders, Inc.*, No. 2:08-CV-01393, 2014 WL 2117088, at *3 (S.D.W. Va. May 21, 2014) (Goodwin, J.) (quoting *Young v. City of Mount Ranier*, 238 F.3d 567, 573 (4th Cir. 2001)). Accordingly, “[w]hen a plaintiff amends a complaint while a motion to dismiss is pending, a court may deny the motion as moot.” *Id.* (denying pending motion to dismiss as moot in light of subsequent amendment of complaint, and collecting other cases holding the same); *see also, e.g., Loved Ones in Home Care, LLC v. Toor*, No. 2:19-cv-00134, ECF No. 22 (S.D.W. Va. May 7, 2019) (Goodwin, J.) (denying pending motion to dismiss as moot after plaintiff filed first amended complaint pursuant to Rule 15(a)(1)(B)).

Plaintiff therefore respectfully submits that this Court should deny Defendants’ pending motions to dismiss the Complaint as moot, in light of Plaintiff’s filing of the First Amended Complaint “as a matter of course.” Fed. R. Civ. P. 15(a)(1)(B). Because of this mootness, Plaintiff reserves all substantive arguments against those motions and will respond to any motions to

dismiss the First Amended Complaint (renewed or otherwise) consistent with the schedule afforded under the Local Rules or Order of the Court.

Dated: July 16, 2021

Respectfully submitted,

/s/ Loree Stark

Joshua Block*
Taylor Brown*
Chase Strangio*
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION
125 Broad St.
New York, NY 10004
Phone: (212) 549-2569
jblock@aclu.org

Avatara Smith-Carrington*
LAMBDA LEGAL
3500 Oak Lawn Avenue, Suite 500
Dallas, TX 75219
Phone: (214) 219-8585
asmithcarrington@lambdalegal.org

Carl Charles*
Tara Borelli*
LAMBDA LEGAL
158 West Ponce De Leon Ave., Ste. 105
Decatur, GA 30
Phone: (404) 897-1880
ccharles@lambdalegal.org

Sruti Swaminathan*
LAMBDA LEGAL
120 Wall Street, 19th Floor
New York, NY 10005
Phone: (212) 809-8585
sswaminathan@lambdalegal.org

Andrew Barr*
COOLEY LLP
1144 15th St. Suite 2300
Denver, CO 80202-5686
Phone: (720) 566-4000
abarr@cooley.com

Loree Stark (Bar No. 12936)
AMERICAN CIVIL LIBERTIES UNION OF WEST
VIRGINIA FOUNDATION
P.O. Box 3952
Charleston, WV 25339-3952
Phone: (914) 393-4614
lstark@acluwv.org

Kathleen Hartnett*
Julie Veroff*
COOLEY LLP
3 Embarcadero Center, 20th Floor
San Francisco, CA 94111
Phone: (415) 693-2000
khartnett@cooley.com

Katelyn Kang*
COOLEY LLP
55 Hudson Yards
New York, NY 10001-2157
Phone: (212) 479-6000
kkang@cooley.com

Elizabeth Reinhardt*
COOLEY LLP
500 Boylston Street, 14th Floor
Boston, MA 02116-3736
Phone: (617) 937-2305
ereinhardt@cooley.com

**Visiting Attorneys*

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

B.P.J. by her next friend and mother, HEATHER JACKSON,

Plaintiff,

v.

WEST VIRGINIA STATE BOARD OF
EDUCATION, HARRISON COUNTY BOARD
OF EDUCATION, WEST VIRGINIA
SECONDARY SCHOOL ACTIVITIES
COMMISSION, W. CLAYTON BURCH in his
official capacity as State Superintendent, and
DORA STUTLER in her official capacity as
Harrison County Superintendent,

Defendants,

and

THE STATE OF WEST VIRGINIA,

Defendant-Intervenor.

Civil Action No. 2:21-cv-00316

Hon. Joseph R. Goodwin

CERTIFICATE OF SERVICE

I, Loree Stark, do hereby certify that on this 16th day of July, 2021, I electronically filed a true and exact copy of *Plaintiff's Consolidated Opposition to Defendants' Motions to Dismiss* with the Clerk of Court and all parties using the CM/ECF System.

/s/ Loree Stark

West Virginia Bar No. 12936